



[Billing Code 3290-F9]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**[Docket Number USTR-2018-0033]**

**Applications for Inclusion on the Binational Panels Roster Under the North American Free Trade Agreement**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Invitation for applications.

**SUMMARY:** The North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the roster. The Office of the United States Trade Representative (USTR) invites applications from eligible individuals wishing to be included on the roster for the period April 1, 2019, through March 31, 2020.

**DATES:** USTR must receive your application by November 26, 2018.

**ADDRESSES:** You should submit your application through the Federal eRulemaking Portal: <http://www.regulations.gov>, using docket number **USTR-2018-0033**. Follow the submission instructions in sections 7 and 8 below. For alternatives to online submissions, please contact Sandy McKinzy at (202) 395-9483 before transmitting your application and in advance of the November 26, 2018 deadline.

**FOR FURTHER INFORMATION CONTACT:** Philip Butler, Assistant General Counsel, [Philip.A.Butler@ustr.eop.gov](mailto:Philip.A.Butler@ustr.eop.gov), (202) 395-5804.

**SUPPLEMENTARY INFORMATION:**

## **1. Binational Panel AD/CVD Reviews Under the NAFTA**

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party using the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of 15 current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties must consult and seek to achieve a mutually satisfactory solution.

## **2. Roster and Composition of Binational Panels**

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review

of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

When there is a request to establish a panel, roster members from the two involved NAFTA Parties will complete a disclosure form that is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

### **3. Criteria for Eligibility for Inclusion on Roster**

Section 402 of the NAFTA Implementation Act (Pub. L. 103-182, as amended (19 U.S.C. 3432)) (Section 402) provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

#### **4. Adherence to the NAFTA Code of Conduct for Binational Panelists**

The “Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20” (<https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Code-of-Conduct>), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members “shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.” The Code of Conduct also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to “disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.” Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist’s duties. In particular, Annex 1901.2 states that “[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.”

#### **5. Procedures for Selection of Roster Members**

Section 402 establishes procedures for the selection by USTR of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1<sup>st</sup> of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 roster. After

consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the United States Trade Representative selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

## **6. Remuneration**

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

## **7. Applications**

USTR invite eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2019, through March 31, 2020, to submit an application. In order to be assured of consideration, USTR must receive your application by November 26, 2018. All submissions must be sent electronically via [www.regulations.gov](http://www.regulations.gov). For alternatives to online submissions, please contact Sandy McKinzy at (202) 395-9483 before transmitting your application and in advance of the November 26, 2018 deadline.

To submit an application via [regulations.gov](http://regulations.gov), enter docket number **USTR-2018-0033** on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “notice” under “document type” on the left side of the search-results page, and click on the “comment now!” link. For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on the “How to Use Regulations.gov” on the bottom of the page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a “type comment” field, or by attaching a document using an “upload file” field. USTR prefers that applications be provided in an attached document. If a document is attached,

please type “Application for Inclusion on NAFTA Chapter 19 Roster” in the “upload file” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the “type comment” field.

Applications must be typewritten, and should be headed “Application for Inclusion on NAFTA Chapter 19 Roster.” Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.

11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

#### **8. Current Roster Members and Prior Applicants**

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster only need to indicate that they are reapplying and submit updates (if any) to their applications on file. Current members do not need to resubmit their applications. Individuals who have previously applied but have not been selected must submit new applications to reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not

be resubmitted.

## **9. Public Disclosure**

Applications are covered by a Privacy Act System of Records Notice and are not subject to public disclosure and will not be posted publicly on [www.regulations.gov](http://www.regulations.gov).

They may be referred to other federal agencies and Congressional committees in the course of determining eligibility for the roster, and shared with foreign governments and the NAFTA Secretariat in the course of panel selection.

## **10. False Statements**

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

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Office of the U.S. Trade Representative.

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